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PTOL-90A (Rev. 04/07)

BEFORE THE BOARD OF PATENT APPEALS

AND INTERFERENCES

Application Number: 09/891,379

Filing Date: June 27, 2001

Appellant(s): AXELSSON ET AL.

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Shawn Gorman

<u>For Appellant</u>

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 22nd, 2008 appealing from the Office action mailed December 28th, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. It should be noted however that claim 25 is cancelled and therefore has been dropped from the grounds of rejection.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 6,460,183	Van der Vleuten	10-2002
US 5,986,650	Ellis et al.	11-1999
WO 97/34414	Yuen et al.	9-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 22-24, 26-28 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuen et al. (WO 97/34414) in view of Van der Vleuten (US Pat. 6,460,183)

   With regards to **claim 22**, Yuen et al. discloses a method comprising steps of:

Receiving at least one electronic program guide corresponding to a broadcast

system (see fig. 7, page 4 line 25)

Generating display of at least one program guide in a first display area

(program listings 46) of the display unit (see fig. 2 and page 4, lines 36-37)

associated with a broadcast receiver.

Selecting a desired program by highlighting the desired program from the at

least one EPG (see page 5, lines 23-26);

Controlling the apparatus to set to the selected program (see page 5 lines 24-

29);

Generating display during browsing of the EPG of the selected program in a

second display area (PIP window 42) of the display unit (see page 5 lines 18-21);

Yuen discloses the step of storing parameters of channel that user was

viewing prior to entering the program guide mode (i.e. last channel) and displaying

the last channel in a third display area (45) separate from the program listings in the

first display area (46). See page 8 lines 22-23. Yuen teaches the step of displaying

a form of user history (i.e. the last channel) in a third display area separate from the

first display area. Yuen however fails to disclose the step of storing parameters

identifying the selected program (i.e. program highlighted in the EPG) in a list of

selected programs in a storage means; and generating display of the selected

programs stored in the storage means in the third display area of the display unit.

In an analogous art, Van der Vleuten discloses a method of maintaining a

history list of recently browsed channels so that user can traverse such a list and

make a selection from user's history. See column 1 lines 42-50. Van der Vleuten

further discloses that such a history list maybe displayed as an on screen menu in

order to facilitate user selection of the recent channel from the history list. See

column 5 lines 58-61). Van der Vleuten is evidence to one of ordinary skill in the art

that it was well known at time of the invention to maintain a history list of recently

browsed channels so that users can traverse back to the recent channel they found

to be of most interest.

It would have been obvious to one of ordinary skill in the art at the time to

modify the user history (i.e. 'last channel') of Yuen in with teachings of Van Der

Vleuten by storing parameters identifying one or more programs selected from the

EPG, in a history list and displaying such a history list to the user in the third display

area thereby providing an intuitive display of recent selections that allows the user to

go back to a recently viewed channel.

With regards to **claim 23**, the modified system further comprises the method

of selecting stored parameters identifying a previously stored program (last

channel/history list, see Van der Vleuten: see column 3, lines 41-45 and lines 26-

28); controlling the apparatus to set to and generating display of the program

identified by the selected parameters in a second display area of the display unit

(see Yuen: page 6, lines 5-12 and page 5 lines 21-30).

With regards to **claim 24**, the modified system further comprises the step of allowing selection of the program currently being displayed in the second display area of the display unit for full screen display (see Yuen page 5, lines 29-33).

With regards to **claim 26**, the modified system comprises first input means that allows for stepwise sequential selection of the stored parameters using forward/backward buttons (see Van der Vleuten column 3, lines 41-55).

With regards to **claim 27**, the modified system further comprises the step of: selecting a program from the list; controlling the apparatus to set to the selected program and generating display of the program selected in the second display area of the display unit (see Yuen: page 5 lines 18-21 and page 6 lines 5-12 and Van der Vleuten: column 3, lines 41-45 and lines 26-28).

With regards to **claim 28**, the modified system further comprises the step of allowing selection of the program currently being displayed in the second display area of the display unit for full screen display (see Yuen page 5, lines 29-33).

With regards to **claim 33**, Yuen discloses a computer readable medium having computer readable instructions (programmed microprocessor, see fig. 1, and page 4 lines 27-28) that when executed perform the method of:

Receiving at least one EPG corresponding to a broadcast system (see fig. 7, page 4 line 25);

Generating display of at least one program guide in a first display area (program listings 46) of the display unit (see fig. 2 and page 4, lines 36-37) associated with a broadcast receiver.

Providing for selection of a desired program (via highlighting) the desired program from the at least one EPG (see page 5, lines 23-26);

Controlling an associated apparatus to set to the selected program (see page 5 lines 24-29)

Generating display during browsing of the selected program in a second display area (PIP window 42) of the display unit (see page 5 lines 18-21);

Providing for selection of an additional program (when user moves cursor up/down from a current position, user selects an another/additional channel from the list) from the program guide (see page 5, lines 23-26);

Repeating the controlling and generating steps for each subsequent program selection (page 5, lines 18-29) when an additional program from the EPG is selected.

Yuen discloses the step of storing parameters of channel that user was viewing prior to entering the program guide mode (i.e. last channel) and displaying the last channel in a third display area (45) separate from the program listings in the first display area (46). See page 8 lines 22-23. Yuen teaches the step of displaying

a form of user history (i.e. last channel) in a third display area separate from the first

display area.

Yuen further discloses that when the listing on the third display area is

highlighted, the highlighted program is displayed in the second display area (see

page 6 lines 5-10). Yuen therefore discloses the step of providing for selection of

stored parameters identifying a previously selected program (i.e. by highlighting the

"last channel").

Controlling the associated apparatus to set to the program identified by the

selected parameters (see page 6 lines 5-12);

Generating display of the program identified by the selected parameters in the

second display area of the display unit (see page 5 lines 18-21); and

Yuen however remains silent on the step of storing parameters identifying the

first desired program selected from the EPG and further fails to disclose storing

parameters for each subsequent program selection when an additional program

from the EPG is selected. Yuen additionally fails to disclose the step of generating

display of a list of stored selected programs in the third display area of the display

unit.

In an analogous art, Van der Vleuten discloses a method of maintaining a

history list of recently browsed channels so that user can traverse such a list and

make a selection from user's history. See column 1 lines 42-50. Van der Vleuten

further discloses that such a history list maybe displayed as an on screen menu in

order to facilitate user selection of the recent channel from the history list. See

column 5 lines 58-61). Van der Vleuten is evidence to one of ordinary skill in the art

that it was well known at time of the invention to maintain a history list of recently

browsed channels so that users can traverse back to the recent channel they found

to be of most interest.

It would have been obvious to one of ordinary skill in the art at the time to

modify the user history (i.e. 'last channel') of Yuen in with teachings of Van Der

Vleuten by storing parameters identifying one or more programs selected from the

EPG, in a history list and displaying such a history list to the user in the third display

area thereby providing an intuitive display of recent selections that allows the user to

go back to a recently viewed channel.

With regards to **claim 34**, Yuen discloses a computer readable medium

having computer readable instructions (programmed microprocessor, see fig. 1, and

page 4 lines 27-28) that when executed perform the method of:

Receiving at least one EPG corresponding to a broadcast system (see fig. 7,

page 4 line 25);

Generating display of at least one program guide in a first display area

(program listings 46) of the display unit (see fig. 2 and page 4, lines 36-37);

Providing for selection of a desired program (via highlighting) the desired

program from the at least one EPG (see page 5, lines 23-26);

Controlling an associated apparatus to set to the selected program (see page

5 lines 24-29);

Generating display during browsing of the selected program in a second

display area (PIP window 42) of the display unit (see page 5 lines 18-21);

Providing for selection of an additional program (when user moves cursor

up/down from a current position, user selects an another/additional channel from the

list) from the program guide (see page 5, lines 23-26);

Repeating the controlling and generating steps for each subsequent program

selection (page 5, lines 18-29) when an additional program from the EPG is

selected.

Yuen discloses the step of storing parameters of channel that user was

viewing prior to entering the program guide mode (i.e. last channel) and displaying

the last channel in a third display area (45) separate from the program listings in the

first display area (46). See page 8 lines 22-23. Yuen teaches the step of displaying

a form of user history (i.e. last channel) in a third display area separate from the first

display area.

Yuen further discloses that when the listing on the third display area is

highlighted, the highlighted program is displayed in the second display area (see

page 6 lines 5-10). Yuen therefore discloses the step of providing for selection of

stored parameters identifying a previously selected program (i.e. by highlighting the

"last channel").

Controlling the associated apparatus to set to the program identified by the

selected parameters (see page 6 lines 5-12);

Generating display of the program identified by the selected parameters in the

second display area of the display unit (see page 5 lines 18-21); and

Yuen however remains silent on the step of storing parameters identifying the

first desired program selected from the EPG in a list of selected programs and

further fails to disclose storing parameters for each subsequent program selection

when an additional program from the EPG is selected. Yuen additionally fails to

disclose the step of generating display of a list of stored selected programs in the

third display area of the display unit.

In an analogous art, Van der Vleuten discloses a method of maintaining a

history list of recently browsed channels so that user can traverse such a list and

make a selection from user's history. See column 1 lines 42-50. Van der Vleuten

further discloses that such a history list maybe displayed as an on screen menu in

order to facilitate user selection of the recent channel from the history list. See

column 5 lines 58-61). Van der Vleuten is evidence to one of ordinary skill in the art

that it was well known at time of the invention to maintain a history list of recently

browsed channels so that users can traverse back to the recent channel they found

to be of most interest.

It would have been obvious to one of ordinary skill in the art at the time to

modify the user history (i.e. 'last channel') of Yuen in with teachings of Van Der

Vleuten by storing parameters identifying one or more programs selected from the

EPG, in a history list and displaying such a history list to the user in the third display

area thereby providing an intuitive display of recent selections that allows the user to

go back to a recently viewed channel.

With regards to **claim 35**, Yuen discloses an apparatus comprising:

A receiver (TV receiver depicted in fig. 7) configured to receive at least one

EPG corresponding to a broadcast system (see page 4 line 25);

A display unit (20) configured to display of at least one program guide in a

first display area (program listings 46) of the display unit (see fig. 2 and page 4, lines

36-37);

A control unit (remote control depicted in fig. 6) configured to select a desired

program (via highlighting) the desired program from the at least one EPG (see page

5, lines 23-26);

A tuner (74) configured to control the apparatus to set to the selected

program (see page 5 lines 24-29);

A memory (RAM comprising cursor position, see page 4 lines 30-31)

configured to generate display during browsing of the selected program (see page 5

lines 14-17, lines 26-29) in a second display area (PIP window 42) of the display unit

(see page 5 lines 18-21, and page 9 lines 29-30);

Yuen further discloses that additional program selections (when user moves

cursor up/down from a current position, user selects an another/additional channel

from the list, see page 5, lines 23-26) causes setting the apparatus to the selected

program and display of the additionally selected programs in the second display

area (page 5 lines 18-29);

Yuen further discloses a memory (RAM, see page 4, lines 30-31) for storing

parameters of the channel that user was viewing prior to entering the program guide

mode (i.e. last channel) wherein the display unit is further configured to display (see

fig. 2) a listing of the program (last channel) that is stored in the memory in a third

display area (45) of the display unit. Furthermore, the display of the third display

area (45) is separate from the first display area (46). See page 8 lines 22-23.

Yuen further discloses that when the listing on the third display area is

highlighted, the highlighted program is displayed in the second display area (see

page 6 lines 5-10). Yuen shows that the control unit is further configured to allow

the selection of program from the list, wherein selection causes to setting and

display of the selected program in the second display area of the display unit (see

page 5 lines 18-21 and page 6 lines 5-12);

Yuen fails to disclose that the memory is configured to store parameters

identifying the desired program selected from the EPG and the additional program

selections. As such the list of such program selections made while browsing the

EPG is not displayed to the user.

In an analogous art, Van der Vleuten discloses a method of maintaining a

history list of recently browsed channels so that user can traverse such a list and

make a selection from user's history. See column 1 lines 42-50. Van der Vleuten

further discloses that such a history list maybe displayed as an on screen menu in

order to facilitate user selection of the recent channel from the history list. See

column 5 lines 58-61. Van der Vleuten is evidence to one of ordinary skill in the art

that it was well known at time of the invention to maintain a history list of recently

browsed channels so that users can traverse back to the recent channel they found

to be of most interest. Furthermore, Van der Vleuten discloses selection of program

from the history list using a control unit, so that the selected program maybe

displayed by the display unit (see column 5 lines 58-61).

It would have been obvious to one of ordinary skill in the art at the time to

modify the user history (i.e. 'last channel') of Yuen in with teachings of Van Der

Vleuten by storing parameters identifying one or more programs selected from the

EPG, in a history list and displaying such a history list to the user in the third display

area thereby providing an intuitive display of recent selections that allows the user to

go back to a recently viewed channel.

2. Claims 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuen

et al. (WO 97/34414) in view of Van der Vleuten (US Pat. 6,460,183) and further in

view of Ellis et al. (US Pat. 5,986,650).

With regards to **claim 29**, the modified system lacks the steps of: activating

timer means upon program selection; controlling the apparatus to tuned to the

selected program for a predetermined period of time; generating display of the

selected program in the second display area of the display unit for the

predetermined time; controlling the apparatus to set to the previously selected

program upon elapse of the predetermined time; and generating display unit upon

elapse of the predetermined time.

However in a further analogous art, Ellis discloses a method of activating a

scanning operation allowing user to see a sample of programming that is currently

airing on a plurality of channels. Ellis further discloses that such a scan operation

maybe performed on smaller subset of listings such as "favorite channels", wherein

user maybe able to scan through samples of programming on channels of particular

interest to them. See column 8 lines 23-27 and column 17 lines 34-38. Additionally,

Ellis discloses that a user initiates the scan operation to browse through

programming on the "favorites" from a "start channel" (see column 10 lines 39-40),

upon which, a sample of programming on a channel on the favorites list is shown for

a predetermined time (see column 11 lines 1-7). As such when the user initiates the

"scan" operation, the system makes a program selection of a channel in the favorite

list, activates a timer upon the program selection (as the program is displayed for

only a predetermined time), controls the apparatus to tuned to the selected program

for a predetermined time, and generates the display of the selected program in the

second display area of the display unit for the predetermined time.

Now, recall that the modified system of Yuen in view of Van der Vleuten

comprises a history list (i.e. a subset listing) that tracks recent channels of the user

and allows the user to navigate through recent channels of interest. It would have

been obvious to one of ordinary skill in the art to further modify the system in view of

Ellis' teachings by allowing the user to "scan" through the history list thereby allowing

viewer to automatically view samples of programming on the user's history list. It

should be noted that in the modified system, there exist scenarios where the history

list may contain as few as two programming channels, i.e. the channel user is

currently tuned to (e.g. channel 13) and another channel user had previously tuned

to (e.g. channel 11). In such a scenario, when a user initiates a scan from the

current channel, the current channel (in this instance, channel 13) becomes the start

channel. Upon activation of the scan, the system then tunes to the next channel (in

this instance, channel 11) on user's history list (see Ellis: column 10 lines 32-36),

thereby performing an automatic program selection by setting tuner to display

programming on the next channel in the history list (viz. channel 11). The system

tunes to channel 11 for a predetermined time and returns to the start channel (in this

case, channel 13) again (see Ellis: column 11, lines 1-7). The above modified

system therefore comprises a scenario for controlling the apparatus to set to the

previously selected program (i.e. "start channel") upon elapse of the predetermined

time; and generating the display of the previously selected programs in the second

display area of the display unit upon elapse of the predetermined time.

With regards to **claim 30**, the modified as above discloses scanning through

channels of the history list for a pre-determined time. Revisiting the example from

claim 29 above, during the scanning operation programming from channel 11 is

displayed in second display area for the predetermined time. The modified system

further allows the user to select the program being displayed in the second display

area currently and exiting the guide-mode (as taught by Yuen: page 5, lines 29-33),

this channel is displayed in full screen. Such a selection stops the scan operation as

noted by Ellis (see column 1lines 17-22).

With regards to **claim 31**, Yuen et al. discloses a method comprising steps of:

Receiving at least one electronic program guide corresponding to a broadcast

system (see fig. 7, page 4 line 25)

Generating display of at least one program guide in a first display area

(program listings 46) of the display unit (see fig. 2 and page 4, lines 36-37)

associated with a broadcast receiver.

Selecting a desired program by highlighting the desired program from the at

least one EPG (see page 5, lines 23-26);

Controlling the apparatus to set to the selected program (see page 5 lines 24-

29);

Generating display during browsing of the EPG of the selected program in a

second display area (PIP window 42) of the display unit (see page 5 lines 18-21);

Yuen discloses the step of storing parameters of channel that user was

viewing prior to entering the program guide mode (i.e. last channel) and displaying

the last channel in a third display area (45). Yuen teaches the step of displaying a

form of user history (i.e. the last channel) in a third display area separate from the

first display area. Yuen however fails to disclose the step of storing parameters

identifying the selected program (i.e. program highlighted in the EPG) in a list of

stored selected programs; and generating display of a list of stored selected

programs stored a third display area of the display unit. Yuen additionally lacks the

steps of: activating timer means upon additional program selection; controlling the

apparatus to tuned to the additionally selected program for a predetermined period

of time; generating display of the additionally selected program in the second display

area of the display unit for the predetermined time; controlling the apparatus to set to

the previously selected program upon elapse of the predetermined time; and

generating display unit upon elapse of the predetermined time.

In an analogous art, Van der Vleuten discloses a method of maintaining a

history list of recently browsed channels so that user can traverse such a list and

make a selection from user's history. See column 1 lines 42-50. Van der Vleuten

further discloses that such a history list maybe displayed as an on screen menu in

order to facilitate user selection of the recent channel from the history list. See

column 5 lines 58-61). Van der Vleuten is evidence to one of ordinary skill in the art

that it was well known at time of the invention to maintain a history list of recently

browsed channels so that users can traverse back to the recent channel they found

to be of most interest.

It would have been obvious to one of ordinary skill in the art at the time to

modify the user history (i.e. 'last channel') of Yuen in with teachings of Van Der

Vleuten by storing parameters identifying one or more programs selected from the

EPG, in a history list and displaying such a history list to the user in the third display

area thereby providing an intuitive display of recent selections that allows the user to go back to a recently viewed channel.

In a further analogous art, Ellis discloses a method of activating a scanning operation allowing user to see a sample of programming that is currently airing on a plurality of channels. Ellis further discloses that such a scan operation maybe performed on smaller subset of listings such as "favorite channels", wherein user maybe able to scan through samples of programming on channels of particular interest to them. See column 8 lines 23-27 and column 17 lines 34-38. Additionally, Ellis discloses that a user initiates the scan operation to browse through programming on the "favorites" from a "start channel" (see column 10 lines 39-40), upon which, a sample of programming on a channel on the favorites list is shown for a predetermined time (see column 11 lines 1-7). As such when the user initiates the "scan" operation, the system makes a program selection of a channel in the favorite list, activates a timer upon the program selection (as the program is displayed for only a predetermined time), controls the apparatus to tuned to the selected program for a predetermined time, and generates the display of the selected program in the second display area of the display unit for the predetermined time.

Now, recall that the modified system of Yuen in view of Van der Vleuten comprises a history list (i.e. a subset listing) that tracks recent channels of the user and allows the user to navigate through recent channels of interest. It would have been obvious to one of ordinary skill in the art to further modify the system in view of Ellis' teachings by allowing the user to "scan" through the history list thereby allowing

viewer to automatically view samples of programming on the user's history list. It

should be noted that in the modified system, there exist scenarios where the history

list may contain as few as two programming channels, i.e. the channel user is

currently tuned to (e.g. channel 13) and another channel user had previously tuned

to (e.g. channel 11). In such a scenario, when a user initiates a scan from the

current channel, the current channel (in this instance, channel 13) becomes the start

channel. Upon activation of the scan, the system then tunes to the next channel (in

this instance, channel 11) on user's history list (see Ellis: column 10 lines 32-36),

thereby performing an automatic program selection by setting tuner to display

programming on the next channel in the history list (viz. channel 11). The system

tunes to channel 11 for a predetermined time and returns to the start channel (in this

case, channel 13) again (see Ellis: column 11, lines 1-7). The above modified

system therefore comprises a scenario for controlling the apparatus to set to the

previously selected program (i.e. "start channel") upon elapse of the predetermined

time; and generating the display of the previously selected programs in the second

display area of the display unit upon elapse of the predetermined time.

With regards to **claim 32**, the modified as above discloses scanning through

channels of the history list for a pre-determined time. Revisiting the example from

claim 31 above, during the scanning operation programming from channel 11 is

displayed in second display area for the predetermined time. The modified system

further allows the user to select the program being displayed in the second display

area currently and exiting the guide-mode (as taught by Yuen: page 5, lines 29-33),

this channel is displayed in full screen. Such a selection stops the scan operation as

noted by Ellis (see column 1lines 17-22).

(10) Response to Argument

The examiner respectfully disagrees that the rejection should be reversed. Only

those arguments having been raised are being considered and addressed in the

Examiner's Answer. Any further arguments regarding other elements or limitations not

specifically argued or any other reasoning regarding deficiencies in a prima facie case

of obviousness that the appellant could have made are considered by the examiner as

having been conceded by the appellant for the basis of decision of this appeal. They

are not being addressed by the examiner for the Board's consideration. Should the

panel find that the examiner's position/arguments or any aspect of the rejection is not

sufficiently clear or a particular issue is of need of further explanation, it is respectfully

requested that the case be remanded to the examiner for further explanation prior to the

rendering of a decision. See 37 CFR 41.50(a)(1) and MPEP 1211.

Appellant argues (see Brief, page 21) that "Van der Vleuten teaches away from

the limitation, 'generating display of the list of the selected programs stored in the

storage means'" wherein the programs were selected from "at least one electronic

program guide" because (see Brief, page 22) "the history list of Van der Vleuten is only

updated if the user's selection is 'selected explicitly by means of numerical means or if a

channel has been selected for a predetermined period of time'". Appellant's arguments

are respectfully traversed. As noted by the appellant, Van der Vleuten's history list is

updated with channels a user has *tuned* to that channel. Now recall that in the system

of Yuen, as a viewer scrolls through the program guide screen (see Yuen: figure 2), the

program corresponding to the highlighted selection is tuned to and displayed in the

second area (42). Therefore, Yuen shows that user selects a preset by highlighting the

appropriate entry in the program guide. Therefore the modified system teaches the step

of user selecting a program in the program guide, wherein the system tunes to the

corresponding channel to display the highlighted program, and adds the "tuned" channel

information to the history list. Therefore it is the modified system as a whole that

teaches the claimed elements, wherein Yuen is relied upon for the teaching of the

program guide from which user can make program selection and display of the selected

program and Van der Vleuten is relied upon for allowing the user to traverse user's

history (expanding on the Yuen's element 45 to include recent history list) which is

contrary to appellant's allegations (see Brief, page 22) that, "the examiner construed the

displayed 'History list' of Van der Vleuten as a program guide". For these reasons

appellant's arguments (see Brief, page 22) stating that it would be impossible with Van

der Vleuten to the selected programs from at least one electronic program guide are

also found unpersuasive.

Appellant's arguments (see Brief, page 22) further stating that the above

references are not combinable because "Van der Vleuten makes it clear that 'disturbing

elements' would not be used but rather only the list" are further found unpersuasive.

Appellant's arguments appear to be taken out of context from the disclosure of Van der

Vleuten, which discloses that the disturbing elements are the indications displayed on

screen of "two previously selected teletext pages" to allow the user to go back recall the

two previously navigated teletext pages (see Van der Vleuten: column 2 lines 40-54).

While it is reasonable to perceive the unsolicited display of two colored indications on

screen as a nuisance and therefore disturbing elements, appellant's position that the

display of an electronic program guide that has been *explicitly invoked by the user* (see

Yuen: page 8, lines 7-9) are disturbing elements as well, appear to be unreasonable.

Rather if the user explicitly invokes the EPG, it is very likely that the user is interested in

obtaining some information from the EPG, and therefore the EPG is not likely

constituting "disturbing elements" as alleged by the appellant.

Appellant further argues (see Brief, page 23) that, "Van der Vleuten teaches

against …the inclusion of signals that are selected by a user scrolling through the

channels and selecting certain channels by the zapping means" because the history list

of Van der Vleuten is only updated if the user's selection is "selected explicitly by means

of numerical means or if a channel has been selected for a predetermined time". Van

der Vleuten discloses inclusion of channels that arrived by zapping means that have

been selected for a predetermined time. It should be further be noted that when a user

selects a particular channel, there is a finite amount time for which the user is "tuned" to

the channel prior to switching to another channel due to inherent delays in processing

signals as well as human processing of actions. Therefore the user is at a selected

channel for a finite time period, even when the user arrived via zapping. Furthermore,

the minimum "predetermined time" needed at a selected channel prior to entry in the

history is established based on the *assumptions* of what is likely going to be interest to

the user (see Van der Vleuten: 56-61). It is well known within the scope of one of

ordinary skill in the art to implement the system by modifying the predetermined time

without departing from the scope of Van der Vleuten's teachings based on such

assumptions. For example, when working with the assumption that any channel

glanced by the user are deemed to be of interest to the users, the predetermined time

maybe set to few seconds or less. The amount of "predetermined time" is therefore not

the critical feature of Van der Vleuten's invention.

Appellant's arguments (see Brief, page 24) stating that, "the art of record does

not show or suggest the 'display of a list of the selected programs stored in the storage

means in a third display area of the display unit, wherein the third display area is

separate from the first display area'" have been noted. Examiner respectfully disagrees.

The basis for a "third display area" containing a bit of user history information, that is

separate from "first display area" comprising the program listings come from Yuen.

Yuen discloses the history information (i.e. last channel, 45) to be displayed in a fixed

cell, *separate from the program listings* (46). See Yuen: page 8 lines 21-28. The

modified system in particular modifies the history information (45) of Yuen with the

history list as taught by Van der Vleuten and therefore teaches the third area comprising

history list that is separate from the first area comprising program listing.

Appellant's arguments (see Brief, page 25) stating that, "the timer means is not

activated upon "program selection" as recited in each of the independent claims from

which the rejected claims depend, where the program selected is chosen from the EPG"

have been noted. However with respect to claims 29 and 31 it should be noted that, claim language merely recites, "activating timer upon program selection" and "activating timer upon additional program selection" respectively. Neither claim necessitates that the "additional program" selection to be chosen from the EPG. Furthermore, claim language does not preclude automatic program selections. In the modified system, when a user initiates the scan operation, the system performs automatic program selection by tuning to the channels in the history list, wherein the system tunes to the channel for a predetermined time. This reads on the claim limitation of "activating timer upon additional program selection".

Appellant's arguments (see Brief, page 25) with respect to Ellis stating that, "there can be no predetermined time as claimed" because, "all channels must be scanned, and the time will depend on the quantity of channels, which will again vary according to list". Appellant further argues that, "Ellis sequentially continues the scan function to the next channel and does not display the previously selected channel upon the elapse of the predetermined time" have been noted. However consider the scenario in the modified system where the history list may contain as few as two programming channels, i.e. the channel user is currently tuned to (e.g. channel 13) and another channel user had previously tuned to (e.g. channel 11). In such a scenario, when a user initiates a scan from the current channel, the current channel (in this instance, channel 13) becomes the start channel. Upon activation of the scan, the system then tunes to the next channel (in this instance, channel 11) on user's history list (see Ellis: column 10 lines 32-36), thereby performing an automatic program selection by setting

tuner to display programming on the next channel in the history list (viz. channel 11).

The system tunes to channel 11 for a predetermined time and returns to the start

channel (in this case, channel 13) again (see Ellis: column 11, lines 1-7). The above

modified system therefore comprises a scenario for controlling the apparatus to set to

the previously selected program (i.e. "start channel") upon elapse of the predetermined

time; and generating the display of the previously selected programs in the second

display area of the display unit upon elapse of the predetermined time.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/UR/

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